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Dec. 4

CONCORD, N.H.

Councilor Charles F. Stafford
66 Gale Avenue
Laconia, New Hampshire

Dear Councilor Stafford:

I have devoted considerable study to the question raised in your letter of November 19, 1951, viz., whether frozen game fish may be sold in New Hampshire for restaurant and hotel purposes. I find that I must come to the same conclusion as that set forth in the notice of Robert H. Stobie, Director of Fish and Game, dated July 14, 1936.

The governing statute is R. L. c. 241, s. 2 which reads in part as follows:

"No person shall at any time of the year take, in any manner, number, or quantity, fish, game, fur-bearing animals, or protected birds, or buy, sell, offer or expose for sale the same, or any part thereof, wherever taken or killed, except as permitted in this title . . .".

Prior to 1935 the statute appeared as Public Laws 197, s. 2; in that year it was amended to add the phrase "wherever taken or killed;". This addition clearly represents a studied effort on the part of the Legislature to prohibit the sale of game fish in this state from wherever it might come.

Since there appears nowhere in the title dealing with fish and game permission to sell the same, it is clear that the quoted statute effectively prohibits such sale regardless of where the fish and game were taken. Since this is so, there remains only to be considered the validity of such a law. And it is very well settled that such a statute does not violate the Constitution. The theory upon which it is sustained is that a state is entitled to protect the food supply which the wild fish and game represent. Since imported fish and game cannot be distinguished from locally killed creatures, proper enforcement of local law requires uniform treatment as between the two. The leading case on

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the subject is State of New York v. Hesterberg, 53 L ed. 75.

It is recognized that when R. L. c. 241, s. 2 was enacted, there were no such dealings in frozen foods as now prevail; and loss to businessmen was, therefore, insignificant. However, the law remains and until it is changed by legislative enactment it must be interpreted to forbid the sale of the product in question.

For your information I enclose herewith a copy of a letter from John H. Finley, Commissioner, and the opinion of Dudley Orr, Assistant Attorney General in reply thereto. This opinion was written on March 1, 1935, prior to the enactment of the amendment to R. L. c. 241, s. 2, noted above. You will note that even without the words "wherever taken or killed", it was the view of this office that imported game fish could not be sold in this state.

Very truly yours,

Warren E. Waters
Assistant Attorney General

WEW:RM